

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0203  
Sales and Use Tax  
For the Years 1999-2000**

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**ISSUES**

**I. Sales and Use Tax- Imposition and Remittance of Sales Tax**

**Authority:** IC 6-8.1-5-1 (b), IC 6-2.5-2-1(a), IC 6-2.5-4-1(b), IC 6-2.5-2-1(b).

The taxpayer protests the imposition of additional sales tax.

**II. Tax Administration- Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b)

The taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is in the business of selling and leasing new and used vehicles, parts, and accessories. The taxpayer also repairs vehicles and operates a body shop. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, use tax, interest, and penalty for the years 1999 – 2000. The taxpayer protested a portion of the sales tax assessment and the penalty and a hearing was held. This Letter of Findings results.

**I. Sales and Use Tax-Imposition and Remittance of Sales Tax**

**DISCUSSION**

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1(a). A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1(b). The retail merchant is charged with the duty of collecting the tax from the purchasers and remitting the collected tax to the state. IC 6-2.5-2-1(b). There is agreement that

the taxpayer sold vehicles in retail sales that were subject to the sales tax. There is also agreement that the taxpayer had the duty to collect and remit sales taxes on those sales.

The taxpayer argued that the department failed to give the taxpayer credit for all of the sales tax it collected. The taxpayer based this contention on work papers included in the audit. In these work papers, there were no figures in the column concerning tax collected by the taxpayer for some of the sales. The taxpayer presented invoices indicating that sales tax was actually collected for each of these blanks. The taxpayer contends that the department did not give it credit for collecting those sales taxes.

The taxpayer errs in its conclusion that it was not given credit for all sales taxes collected. The amount of sales tax due was not calculated from the work papers cited by the taxpayer. The department's auditor reviewed all the taxpayer's sales invoices. From this information, the auditor tallied the amount of sales tax collected. Then the auditor compared the monthly sales taxes collected according to the invoices to the monthly sales tax returns filed by the taxpayer. Since the auditor was unable to balance the taxpayer's invoices to the returns on a monthly basis, the auditor attempted to reconcile them on an annual basis. The auditor then compared the annual collections to the annual returns and remittances. In both 1999 and 2000 there were discrepancies between the amounts of sales tax actually collected per the taxpayer's invoices and the taxpayer's returns and accompanying payments to the state. In each of these years, the taxpayer collected more sales taxes than it reported and remitted to the state. The department correctly assessed the difference between sales taxes collected and sales taxes remitted to the state.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration-Negligence Penalty**

### **DISCUSSION**

The taxpayer also protested the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer had a duty to remit all the sales taxes collected. The taxpayer also had a duty to pay use tax on the use of clearly taxable items such as shirts, key chains, fleeces, hats, ties, and vests when no sales tax was paid at the time of purchase. The taxpayer's carelessness and

inattention to detail caused it to fail to remit all sales taxes collected and pay the use tax on the use of many items when no sales tax was paid at the time of purchase. These breaches of the taxpayer's duties constitute negligence.

**FINDING**

The taxpayer's protest is denied.

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